

REMARKS

This amendment is responsive to the outstanding Office Action, and is accompanied by a Request for Continued Examination (RCE) and RCE fee, under 37 CFR 1.114. Entry of the foregoing amendment and consideration of the amendment and the arguments below is therefore respectfully requested. The rejections in the Office Action are discussed below.

Rejections Under 35 U.S.C. § 102(b)

The Examiner has maintained the rejection of Claim 37 as being anticipated by U.S. Patent No. 4,992,147 to Bolick et al.

The Examiner has also maintained the rejection to Claim 37 as being anticipated by U.S. Patent No. 5,567,287 to Joshi et al.

Claim 37 has been amended. Support for the amendment can be found in original Claim 37 and paragraphs 131 and 132 of the application as originally filed. Applicants submit that the amended Claim 37 is novel over both the disclosures of Bolick and Joshi. It is settled that a § 102(b) rejection can be maintained only where the cited reference identically discloses all elements of the claimed invention. Applicants submit that the combination of elements now defined in the amended Claim 37 is not identically disclosed in either of the cited references, such that the amendments to the Claim avoid both rejections under § 102(b).

Withdrawal of the § 102(b) rejections and allowance of Claim 37 are therefore respectfully requested.

Conclusion

It is submitted that based upon the foregoing amendment, claims 37 should now be allowable. Early notice to this effect is earnestly solicited. If there are any outstanding objections or rejections which could be dealt with by means of a telephone interview, the Examiner is encouraged to contact the undersigned representative.

Respectfully submitted,

Dated: 4/8/05

By: Heidi Eisenhut
Heidi L. Eisenhut
Attorney for Applicant
Registration No. 46,812

GORDON & REES LLP
101 West Broadway, Suite 1600
San Diego, CA 92101
Telephone: (619) 696-6700
Facsimile: (619) 696-7124

Docket No. BFETH 1025793